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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,985	02/10/2004	Eric Taneda		4519

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/776,985

Applicant(s)

TANEDA, ERIC

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kawashima (Jp 9-154614).

Kawashima discloses dry ice completely encased in a material which prevents the escape of the solid dry ice matter due to the porous nature of the material which is all claim 1 positively recites.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Gibot et al (6,427,481) or Tavernier (FR 2643872).

Gibot et al and Tavernier disclose dry ice (CO<sub>2</sub> snow is dry ice in particulate form) enclosed in a material which prevents the escape of the solid dry ice ~~drying~~ matter but has means to allow the escape of CO<sub>2</sub>. In regard to claim 7, Gibot et al discloses porous plastic.

Claims 2, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibot et al in view of Kawashima, Tavernier and applicant's admission of the prior art.

The art, taken as a whole, teaches the use of porous packaging materials for packaging dry ice. Applicant's admission of the prior art discloses paper-like porous material is, of course, conventional. The examiner takes notice of the fact that it is notoriously well known that paper-like material, canvas, cloth are well known

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materials of construction known to have gas permeability or breathability. Applicant is not the inventor of these materials nor the first to realize their permeable properties. To modify the combination and substitute one conventional permeable material of construction for another conventional permeable material of construction would therefore have been obvious. In regard to claim 5, the language of claim 5 is construed to be that of intended use and the containers of the art, taken as a whole, would inherently have the capability of being used to transport frozen foodstuffs.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 2 and 4 above, and further in view of Ware (1,952,693) and Hill (2,071,303).

Claim 3 recites that the encased dry ice is associated with a conventional ice cream product. Applicants admission of the prior art discloses it was known ~~law~~ to associate dry ice with ice cream including the particular ice cream, albeit without the gas permeable casing. Ware and Hill are relied on as further evidence that it was notoriously well known to associate dry ice with ice cream. To modify the combination and provide the encased dry ice in association with the ice cream for its art recognized and applicant's intended function of maintaining the product frozen for a period of time is therefore seen to have been obvious.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 5 above, and further in view of Kono et al (Jp 2000-335648).

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Claim 6 recites the bag is provided with a way to enable the user to open the pouch (i.e. make it reusable). As evidenced by Kono et al, zipper- type bags are, of course, conventional and to modify the combination and provide a means to open the bag such as a zipper for reuse capability would therefore have been obvious.

The remainder of the references cited on the USPTO 892 form are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 6:30am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af  
June 7, 2005

Steven Weinstein  
**STEVE WEINSTEIN**  
**PRIMARY EXAMINER** 1761